



This document is scheduled to be published in the Federal Register on 12/02/2016 and available online at <https://federalregister.gov/d/2016-28591>, and on FDsys.gov

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR 5792-I-01]
RIN 2501-AD69

Changes to HOME Investment Partnerships (HOME) Program Commitment Requirement

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Interim final rule.

SUMMARY: This rule changes the method by which HUD will determine participating jurisdictions' compliance with the statutory 24-month commitment requirement. Beginning with Fiscal Year (FY) 2015 grants, HUD will implement a grant-specific method for determining compliance with these requirements. This rule also establishes a method of administering program income that will prevent participating jurisdictions from losing appropriated funds when they expend program income.

DATES: Effective Date: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Due Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit comments regarding this interim final rule. All communications must refer to the above docket number and title. To receive consideration as public comments, comments must be submitted through one of the two methods specified below:

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW, Suite 7286, Washington, DC

20410; or at 202-708-2684 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

Section 218(g) of the National Affordable Housing Act of 1990 (NAHA), as amended, requires that participating jurisdictions place Home Investment Partnerships Program (HOME) funds under binding commitment within 24 months after the last day of the month in which HUD made the funds available (i.e., obligated the grant by executing the HOME grant agreement). This section of NAHA further states that a participating jurisdiction loses the right to draw any funds that are not placed under binding commitment by that date and that HUD shall reduce the participating jurisdiction's line of credit by the expiring amount.

To date, HUD has measured compliance with the HOME program 24-month requirement for committing funds using a cumulative methodology. Because HUD's Integrated Disbursement and Information System (IDIS) committed and disbursed funds on a first-in, first-out basis through participating jurisdictions' FY 2014 HOME grants, participating jurisdictions did not have the ability to designate funds from a specific allocation when committing HOME funds to a project. Consequently, HUD implemented the commitment requirement through a cumulative methodology under which HUD determined a participating jurisdiction's compliance with the 24-month deadline by determining whether the total amount committed by the participating jurisdiction from all HOME grants it had received was equal to or greater than the participating jurisdiction's cumulative commitment requirement for all grants that had been obligated for 24

months or longer. This methodology has been described in the HOME program regulations since 1997.

HUD will begin using a grant-specific method of determining compliance with the 24-month commitment deadline, beginning with FY 2015 HOME grants. HUD has made changes to IDIS so that, beginning with FY 2015 grants, the participating jurisdiction will select the grant year's funds that will be committed to a specific project or activity. When the participating jurisdiction requests a draw of grant funds for that project or activity, HUD, through IDIS, will disburse the funds committed to that project or activity, rather than the oldest funds available.

As mentioned above, prior to this change, IDIS did not permit participating jurisdictions to specify which grant years' funds they were committing to a specific project. This system change makes it possible for participating jurisdictions to commit funds and for HUD to assess commitment deadline compliance on a grant-specific basis, beginning with FY 2015 HOME grants.

HOME program regulatory changes are also needed to address the timely commitment and expenditure of program income, repaid funds, recaptured funds, and funds committed for programs to be administered by State recipients and subrecipients. Conforming changes to the consolidated plan regulations with respect to program income, repaid funds, and recaptured funds are also made.

The following section of this preamble provides a section-by-section overview of the interim regulatory changes.

II. This Interim Rule—Section-by-Section

Consolidated Planning (§§ 91.220 and 91.320)

HUD has revised the regulations governing the HOME program components of the action plans for local governments (§ 91.220) and States (§ 91.320). Specifically, this rule revises sections § 91.220(l)(2)(i) and § 91.320(k)(2)(i) to require the participating jurisdiction to include uncommitted program income, repayments, and recaptured funds that it has received during the previous year in the resources it describes in its annual action plan. The rule gives participating jurisdictions the option to include program income, repayments, or recaptures expected to be received during the program year in the summary of anticipated Federal resources described in their annual action plan. Participating jurisdictions are not required to include these anticipated funds in their action plan, because doing so would result in them having a period of less than 24 months to commit these funds. However, if a participating jurisdiction did not include anticipated program income, repayments, or recaptured funds in the annual action plan and later wished to commit such funds to a HOME project or activity, it would be required to amend its annual action plan, in accordance with the provisions of § 91.505.

Definitions (§ 92.2)

This rule eliminates reference to an agreement with a contractor from the definition of “commitment” in § 92.2. Unlike State recipients and subrecipients, which design programs and develop policies and procedures to administer those programs, contractors that administer HOME-funded programs carry out the participating jurisdiction’s policies and procedures. When a participating jurisdiction carries out HOME activities using its own employees, HOME funds are committed when the participating jurisdiction executes an agreement with a project owner to assist a specific project. When a participating jurisdiction uses contractors in place of its own employees to carry out activities, the agreement with those contractors should not constitute a commitment.

HUD has added language to the definition clarifying that community housing development organization (CHDO) operating expense funds, CHDO capacity building funds, and CHDO project-specific technical assistance and site control loans are considered committed when the participating jurisdiction executes a legally binding agreement for the use of the funds. Similarly, the rule includes language clarifying that administrative and planning cost funds are considered committed based on the amount set aside for such purposes in IDIS. These revisions reflect HUD's longstanding practice of considering these three types of CHDO funds, each of which is designated as a unique fund type in IDIS, as committed based upon legally binding written agreements for the activities and make the regulatory definition of "commitment" comprehensive.

HOME Investment Trust Fund (§ 92.500)

Commitment Deadline

This rule revises § 92.500(d). Currently, 24 CFR 92.500(d)(1) describes the requirements for reducing a participating jurisdiction's grant for failure to meet the 24-month commitment deadline, the 24-month deadline for committing 15 percent of a HOME allocation for CHDO set-aside projects, and the 5-year deadline for expending HOME funds. Section 92.500(d)(2) then describes the cumulative method for determining compliance with the deadlines outlined in paragraph (d)(1) of § 92.500. This rule reorganizes these paragraphs so that § 92.500(d)(1) addresses commitment, CHDO set-aside commitment, and expenditure requirements for FY 2015 and subsequent-year HOME allocations and § 92.500(d)(2) addresses these requirements for FY 2014 and prior-year HOME allocations.

At § 92.500(d)(1)(i), this rule requires that HUD recapture any funds (including funds for CHDOs under § 92.300) from a specific grant allocation that are in the participating

jurisdiction's United States Treasury Account and are not committed within 24 months of the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement for the specific fiscal year allocation. Participating jurisdictions will no longer have flexibility to meet the requirement that 15 percent of its HOME allocation be used for housing owned, developed, or sponsored by CHDOs on a cumulative basis (e.g., committing less than 15 percent to CHDOs in some years and more than 15 percent to CHDOs in others, but maintaining compliance by ensuring that 15 percent of cumulative HOME allocations are used for CHDO projects). Each participating jurisdiction is now required to commit a minimum of 15 percent of each year's allocation or HUD will recapture the funds.

The rule at § 92.500(d)(1)(ii) establishes a new deadline to ensure that funds that have been committed to State recipients or subrecipients are subsequently committed timely to a specific local project. HOME funds that a participating jurisdiction committed to a State recipient or subrecipient must be committed to a specific local project within 36 months after the last day of the month in which HUD notified the participating jurisdiction of HUD's execution of its HOME Investment Partnership Agreement for the specific fiscal year allocation. HUD has established this deadline because, with the elimination of the 5-year expenditure deadline described below, HOME funds committed to a State recipient or subrecipient could remain uncommitted to a project until the expiration of the funds at the end of 9 years, at which point they would be recaptured. The additional deadline is necessary to ensure that HOME funds that have been committed to State recipients or subrecipients are committed to projects within a reasonable period of time.

For FY 2014 and previous grants, HUD will continue using the cumulative method for determining compliance with the commitment deadline. Participating jurisdictions have relied on

the existing HOME regulations at § 92.500(d)(2) and the HOME Deadline Compliance reports that HUD has posted monthly on its HOME program website¹ since 2005, which describe and implement the cumulative method of determining compliance with the HOME commitment, CHDO commitment, and expenditure deadlines. However, HUD has eliminated the existing § 92.500(d)(2) and added new text to fully explain the cumulative methodology that will continue to apply to FY 2014 and previous grants. A new paragraph (d)(2)(i)(A) in § 92.500 establishes the 24-month commitment requirement for FY 2014 and previous HOME allocations, including the 15 percent CHDO reservation requirement. New paragraph (d)(2)(i)(B) describes the cumulative method that HUD will continue to use to measure compliance with the 24-month commitment deadlines for these grants. New paragraph (d)(2)(i)(C) retains existing regulatory language stating that HUD may recapture HOME funds for any penalties assessed by HUD under § 92.552 (Sanctions).

New paragraph § 92.500(d)(2)(iii) requires FY 2014 and previous allocations to be committed by the participating jurisdiction's deadline for FY 2015 allocations. For deadlines occurring in 2016 for FY 2014 HOME allocations, HUD is following the existing regulation and using the cumulative method for determining compliance with the 24-month commitment requirement. As a result, it was necessary to include commitments from FY 2015 allocations in the cumulative calculation of commitments, creating a situation in which FY 2014 and earlier funds would not be separately subject to any commitment requirement.

¹ HUD's HOME program website is located at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home.

Expenditure Deadline

In this rule, HUD has eliminated the 5-year deadline for expenditure of HOME funds appropriated for FY 2015 and subsequent years. This regulatory deadline was established in the December 16, 1991, interim rule (56 FR 65313) issued to implement the HOME statute. At that time, funds appropriated for the HOME program were available until expended and HUD determined that it was necessary to establish a deadline to ensure that HOME funds were expended expeditiously to develop affordable housing. Beginning with the FY 2002 HOME appropriation, and for all subsequent appropriations, funds appropriated for the HOME program are available for obligation to participating jurisdictions for 3 years after the first day of the fiscal year for which they were appropriated and expire 5 years after the period of obligation (i.e., at the end of the eighth year). Expired funds are recaptured by the United States Treasury. HUD's FY 2015 and FY 2016 appropriations laws have extended the period of obligation of HOME funds to 4 years; the funds expire 5 years after the period of obligation (i.e., at the end of the ninth year). In addition, in 2013, HUD established a 4-year deadline for completing projects assisted with HOME funds in § 92.205(e)(2). Because of these new deadlines for expiration of appropriated funds and completion of projects, HUD believes that the 5-year expenditure deadline is duplicative and creates an unnecessary burden on participating jurisdictions. Thus, the deadline is eliminated.

This rule also eliminates the separate 5-year deadline for expenditure of CHDO set-aside funds appropriated for FY 2015 and subsequent years. In its 2013 HOME rulemaking, HUD determined that a separate examination of CHDO expenditures was necessary because, under the cumulative method of determining compliance with the 5-year expenditure requirement, rapid expenditure of other HOME funds frequently shielded older, unexpended CHDO funds from

deobligation. This separate deadline is no longer necessary and this rule eliminates both the overall and the CHDO-specific 5-year deadlines for expending HOME funds.

Expiration of Funds

For clarity, HUD has included the 9-year deadline for the expiration of HOME funds in § 92.500(d)(2)(iii)(C). The new provision states that HUD will recapture funds from a specific fiscal year allocation that are in the United States Treasury account and are not expended by the end of the fifth year after the period of availability for obligation by HUD. These funds will be deobligated from the participating jurisdiction and returned to the United States Treasury.

Program Disbursement and Information System (§ 92.502)

This rule eliminates § 92.502(b)(2), which contained two provisions related to HUD cancellation of projects. The first provision stated that HUD's information system could cancel a project for which project set-up information was not completed within 20 days. This provision is not necessary, because IDIS does not permit project set up to occur until all required information has been entered. The second provision permitted HUD to automatically cancel projects that had been committed in IDIS for 12 months without an initial disbursement of funds. HUD will continue to monitor projects for timely initial disbursement of funds. However, the automatic cancellation of projects by IDIS is no longer appropriate because it may result in the loss of funds that become uncommitted after the 24-month commitment deadline irrespective of the nature and extent of any project delay.

The rule revises § 92.502(c)(3) to add language stating that, beginning with FY 2015 allocations, the specific funds that are committed to a project will be disbursed for that project. This provision is necessary because, beginning with FY 2015 HOME grants, IDIS no longer disburses funds on a first-in, first-out basis. HUD also adds language to this paragraph stating

that if funds in both the HOME local account and in the United States Treasury account are committed to a HOME project, the funds in the local account must be disbursed before the participating jurisdiction requests that HOME funds be disbursed from the United States Treasury account. This provision ensures that program income and other HOME funds in the local account are disbursed before HOME funds are drawn from the Treasury.

Program Income, Repayments, and Recaptured Funds (§ 92.503)

HUD has revised paragraphs § 92.503(b)(2) and (3) so that participating jurisdictions that must repay HOME funds for any reason must seek HUD's instructions with respect to the account to which the HOME funds must be repaid. By providing specific instructions on a case-by-case basis, HUD can avoid situations in which a participating jurisdiction repays funds to a Federal HOME account after the 24-month deadline and loses access to the funds as a result.

Under the first-in, first-out method of disbursing funds, it was generally not necessary for participating jurisdictions to commit program income and other funds in the local HOME account through IDIS prior to expending the funds. When a participating jurisdiction had program income on hand, it, generally, disbursed program income for the next HOME cost. Since 2007, HUD has excluded expended HOME program income from the calculation of total commitments or expenditures for determining compliance with the 24-month commitment and the 5-year expenditure deadlines.

This rule changes the manner in which program income and other funds in the local HOME account are treated. Otherwise, a participating jurisdiction would be required to uncommit appropriated HOME funds from a specific project each time it disbursed program income for that project. This would then subject the newly uncommitted HOME funds to recapture by HUD if the 24-month commitment deadline for those funds had passed. To avoid

unnecessary loss of funds, HUD has determined that participating jurisdictions should be permitted to accumulate program income, repayments, and recaptured funds during a program year and that a deadline for committing HOME funds should be applied to those funds in the local account. Although participating jurisdictions are required to include program income expected to be received in their consolidated plan or annual action plans, HUD recognizes that participating jurisdictions cannot always accurately estimate the amount and timing of program income, recaptures, or repaid funds that they may receive. Consequently, to accommodate the unpredictability associated with the receipt of program income, HUD has established special provisions with respect to program income.

The rule adds a new § 92.503(d) to establish a deadline for committing funds deposited in a participating jurisdiction's local HOME account. These funds include program income as defined at § 92.2, repayments of HOME funds pursuant to § 92.503(b), and recaptured funds as described in § 92.503(c). HUD has determined it is necessary to establish this deadline because, under the new requirements for committing funds from specific allocations, funds in the local account will have to be committed to specific projects before they can be expended. The deadline for committing program income, repayments, and recaptured funds received during a program year is the same as the commitment deadline for the HOME grant allocation for the subsequent program year. HUD has determined that this approach is appropriate because: (1) the deadline for committing program income should not be shorter than for appropriated funds, and, unlike appropriated funds, program income, repayments, and recaptured funds are received sporadically throughout the year; and (2) it would be administratively burdensome for participating jurisdictions to track and comply with two separate deadlines each year for committing their HOME allocation and funds in their local account. Further, while the amount and approximate

date of receipt for program income can often be estimated by a participating jurisdiction, repaid funds and recaptured funds generally cannot be anticipated in advance.

Participating Jurisdiction Responsibilities; Written Agreements; On-site Inspections (§ 92.504)

This rule adds new paragraphs at § 92.504(c)(7) and (8) to establish the requirements for written agreements for CHDO project-specific technical assistance, site control loans, project-specific seed money loans, and community development capacity building activities. These provisions are added to correspond to the addition of these agreements to the definition of “commitment” at § 92.2.

III. Justification for Interim Rule

HUD generally publishes rules for advance public comment in accordance with its rule on rulemaking at 24 CFR part 10. However, under 24 CFR 10.1, HUD may omit prior public notice and comment if it is “impracticable, unnecessary, or contrary to the public interest.” In this instance, HUD has determined that it is unnecessary to delay the effectiveness of this rule for advance public comment.

The HOME statute requires that HOME funds be placed under legally binding agreement within 24 months of HUD’s obligation of the HOME grant to the participating jurisdiction. As described in the HOME regulations at 24 CFR 92.500(d)(2), since 1997 HUD has determined compliance with the commitment requirement by comparing cumulative commitments through the deadline date to the cumulative amount of HOME funds required to have been committed as of that date.

Beginning in 2013, HUD has frequently discussed with HOME participating jurisdictions the planned change from the cumulative method of measuring commitment compliance to a grant-specific method as part of HUD’s transition to grant-based accounting for its formula grant

programs. HUD notified all HOME participating jurisdictions of the planned IDIS programming changes to implement grant-specific commitment deadline compliance for FY 2015 HOME grants.²

HUD has also conducted webinars to explain the pending changes in the method for determining compliance with the commitment deadline beginning with FY 2015 HOME grants.³ During 2015 and 2016, HUD provided HOME grant-based accounting training at numerous HOME conferences sponsored by membership associations for HOME participating jurisdictions and at meetings hosted by HUD field offices across the country.

The scope of the rule amendments is limited to this change and to other changes that: (1) conform the regulations to the new method or make minor corrections and clarifications of provisions relating to commitments and the written agreements through which HOME funds are committed; (2) eliminate the expenditure deadline and automatic project cancellation provisions that are no longer required under the grant-specific method of committing and expending funds, or which may otherwise help to minimize undue risk of HOME funding deobligations; and (3) establish a project commitment deadline for funds provided to State recipients and subrecipients to ensure timely deployment of funds for affordable housing projects.

With the exception of the new requirements related to program income, this rule does not establish new and unfamiliar requirements for HOME participating jurisdictions. Moreover, if HUD were to issue this rule without adjusting the program income requirements, HOME

² HUD memorandum, “System and Regulatory Changes to Eliminate First-In-First-Out Accounting in the Integrated Disbursement and Information System,” May 9, 2014, <https://www.hudexchange.info/resources/documents/CPD-Memo-System-and-Regulatory-Changes-to-Eliminate-First-In-First-Out-Accounting-in-IDIS.pdf>; HUD fact sheet, “Transition to Grant Based Accounting,” June 2015, <https://www.hudexchange.info/resources/documents/Transition-to-Grant-Based-Accounting.pdf>; and HOME FACTS - Vol. 6 No. 2, June 2015, <https://www.hudexchange.info/resources/documents/HOME-FACTS-Vo6-No2-HOME-IDIS-Grant-Based-Accounting.pdf>.

³ “HOME IDIS Webinar: Grant Based Accounting Changes for FY 2015 and Onward,” August 12, 2015, <https://www.hudexchange.info/training-events/courses/home-idis-grant-based-accounting-changes-for-fy-2015-and-onward-webinar/>.

participating jurisdictions could potentially lose millions of dollars of appropriated HOME funds each time they expended program income while HUD conducted proposed and final rulemaking processes. Consequently, the program income changes are included in the rule because they help to avert the loss of large amounts of HOME funds by the communities and beneficiaries for which they were appropriated.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, HUD recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing a 60-day public comment period. HUD is specifically soliciting comment on the best way to treat program income to avoid loss of appropriated HOME funds. All comments will be considered in the development of the final rule.

IV. Findings and Certifications

Information Collection Requirements

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0171.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500, and is also available to view on www.regulations.gov. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As discussed, this regulation changes the manner in which HUD measures compliance with the statutory 24-month commitment deadline in the HOME program and does not alter the manner in which participating jurisdictions administer their HOME programs. Given this fact, HUD anticipates the regulatory changes will have minimal, or no, economic impacts.

Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program that would be affected by this rule is 14.239.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 91 and 92 as follows:

**PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND
DEVELOPMENT PROGRAMS**

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601-3619, 5301-5315, 11331-11388, 12701-12711, 12741-12756, and 12901-12912.

2. In § 91.220, redesignate paragraphs (l)(2)(i) through (vii) as (l)(2)(ii) through (viii), and add new paragraph (l)(2)(i) to read as follows:

§ 91.220 Action plan.

*	*	*	*	*
(1)	*	*	*	*
(2)	*	*	*	*

(i) The HOME program resources that the participating jurisdiction must describe in the action plan are the fiscal year HOME allocation plus the amount of program income, repayments, and recaptured funds in the participating jurisdiction's HOME Investment Trust Fund local account (see 24 CFR 92.500(c)(1)) at the beginning of the participating jurisdiction's program year. The jurisdiction may choose to include program income, repayments, and

recaptured funds that are expected to be received during the program year if the jurisdiction plans to commit these funds during the program year.

* * * *

3. In § 91.320, redesignate paragraphs (k)(2)(i) through (vii) as paragraphs (k)(2)(ii) through (viii), and add new paragraph (k)(2)(i) to read as follows.

§ 91.320 Action plan.

* * * *

(k) * * *

(2) * * *

(i) The HOME program resources that the State must describe in the action plan are the fiscal year HOME allocation plus the amount of program income, repayments, and recaptured funds in the State's HOME Investment Trust Fund local account (see 24 CFR 92.500(c)(1)) at the beginning of the State's program year. The State may choose to include program income, repayments, and recaptured funds that are expected to be received during the program year if the State plans to commit these funds during the program year.

* * * *

4. Revise § 91.505(a)(2) to read as follows:

§ 91.505 Amendments to the consolidated plan.

(a) * * *

(2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income, reimbursements, repayment, recaptures, or reallocations from HUD), not previously described in the action plan; or

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

5. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701-12839.

6. In § 92.2, revise paragraph (1) of the definition of “Commitment” to read as follows:

§ 92.2 Definitions.

* * * * *

Commitment means:

(1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) that meets the minimum requirements for a written agreement in § 92.504(c). An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment. Funds for administrative and planning costs of the HOME program are committed based on the amount in the program disbursement and information system for administration and planning. The written agreement must be:

(i) With a State recipient or a subrecipient to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance;

(ii) With a community housing development organization to provide operating expenses;

(iii) With a community housing development organization to provide project-specific technical assistance and site control loans or project-specific seed money loans, in accordance with § 92.301;

(iv) To develop the capacity of community housing development organizations in the jurisdiction, in accordance with § 92.300(b); or

(v) To commit to a specific local project, as defined in paragraph (2) of this definition.

* * * * *

7. Revise § 92.500(d) to read as follows:

§ 92.500 The HOME Investment Trust Fund.

* * * * *

(d)(1) Reductions of Fiscal Year 2015 and subsequent fiscal year allocations. HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund, as follows:

(i) Any funds from a specific fiscal year allocation that are in the United States Treasury account that are not committed (including funds for community housing development organizations under § 92.300) within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement for the specific fiscal year allocation;

(ii) Any funds from a specific fiscal year allocation that were committed to a State recipient or subrecipient that are not committed to a specific local project within 36 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement for the specific fiscal year allocation;

(iii) Any funds from a specific fiscal year allocation that are in the United States Treasury account that are not expended (drawn down) by September 30 of the fifth year after the end of the period of availability of the fiscal year allocation for obligation by HUD. Due to end-of-year financial system closeouts that begin before this date and prevent electronic access to the payment system, requests to draw down the funds must be made at least 7 full business days before this date to ensure that the funds still can be drawn from the United States Treasury account through the computerized disbursement and information system; and

(iv) Any penalties assessed by HUD under § 92.552.

(2)(i) Reductions of Fiscal Year 2014 and prior fiscal year allocations. HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:

(A) Any funds from Fiscal Year 2014 and prior fiscal year allocations in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction, under § 92.300, and which are not committed to a community housing development organization project within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds from Fiscal Year 2014 and prior fiscal year allocations in the United States Treasury account that are not committed within 24 months after the last day of the month

in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

(C) Any funds from Fiscal Year 2014 and prior fiscal year allocations in the United States Treasury account that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

(D) Any penalties assessed by HUD under § 92.552.

(ii) For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(2)(i)(A), (B), and (C) of this section, HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from all fiscal year allocations through the Fiscal Year 2014 allocation. This sum must be equal to or greater than the sum of all fiscal year allocations through the fiscal year allocation being examined (minus previous reductions to the HOME Investment Trust Fund), or in the case of commitments to CHDOs, 15 percent of those fiscal year allocations.

(iii) HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of all fiscal year allocations through the Fiscal Year 2014 allocation that are uncommitted by the commitment deadline for the Fiscal Year 2015 allocation.

8. In § 92.502, remove paragraph (b)(2), redesignate paragraph (b)(1) as (b), and revise paragraph (c)(3) to read as follows:

§ 92.502 Program disbursement and information system.

* * * *

(c) * *

(3) HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the United States Treasury account. Beginning with the Fiscal Year 2015 allocation, the specific funds that are committed to a project will be disbursed for that project. If both funds in the local account and funds in the United States Treasury account are committed to a project, the funds in the local account must be disbursed before requests are made for HOME funds in the United States Treasury account for the project.

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9. In § 92.503, revise paragraphs (b)(2) and (3) and add paragraph (d) to read as follows:

§ 92.503 Program income, repayments, and recaptured funds.

* * * * *

(b) * * *

(2) Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction, in accordance with paragraph (b)(3) of this section, except for repayments of project-specific community housing development organization loans that are waived, in accordance with §§ 92.301(a)(3) and (b)(3). In addition, any HOME funds used for costs that are not eligible under this part must be repaid by the participating jurisdiction, in accordance with paragraph (b)(3) of this section.

(3) HUD will instruct the participating jurisdiction to either repay the funds to the HOME Investment Trust Fund Treasury account or the local account. If the jurisdiction is not a participating jurisdiction at the time the repayment is made, the funds must be remitted to HUD and reallocated, in accordance with § 92.454.

* * * * *

(d) Commitment of funds in the local account. Beginning with the Fiscal Year 2017 action plan, as provided in 24 CFR 91.220(l)(2) and 91.320(k)(2), program income, repayments, and recaptured funds in the participating jurisdiction's HOME Investment Trust Fund local account must be used in accordance with the requirements of this part, and the amount of program income, repayments, and recaptured funds in the participating jurisdiction's HOME Investment Trust Fund local account at the beginning of the program year must be committed before HOME funds in the HOME Investment Trust Fund United States Treasury account, except for the HOME funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds), under § 92.300(a), for investment only in housing to be owned, developed, or sponsored by community housing development organizations. The deadline for committing program income, repayments, and recaptured funds received during a program year is the date of the participating jurisdiction's commitment deadline for the subsequent year's grant allocation.

10. Add § 92.504(c)(7) and (8) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(7) Community housing development organization receiving assistance for project-specific technical assistance and site control loans or project-specific seed money loans. The agreement must identify the specific site or sites and describe the amount and use of the HOME funds (in accordance with § 92.301), including a budget for work, a period of performance, and a

schedule for completion. The agreement must also set forth the basis upon which the participating jurisdiction may waive repayment of the loans, consistent with § 92.301, if applicable.

(8) Technical assistance provider to develop the capacity of community housing development organizations in the jurisdiction. The agreement must identify the specific nonprofit organization(s) to receive capacity building assistance. The agreement must describe the amount and use (scope of work) of the HOME funds, including a budget, a period of performance, and a schedule for completion.

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Dated: November 22, 2016

Harriet Tregoning,
Principal Deputy Assistant
Secretary for Community Planning and
Development

Approved on November 2, 2016

Nani A. Coloretti,
Deputy Secretary

[FR-5792-I-01]

[FR Doc. 2016-28591 Filed: 12/1/2016 8:45 am; Publication Date: 12/2/2016]